

<sup>2</sup> The Board notes that, following the issuance of the October 1, 2020 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On June 1, 2020 appellant, then a 55-year-old internal revenue agent, filed a traumatic injury claim (Form CA-1) alleging that on May 20, 2020 she fractured her left upper extremity while in the performance of duty. She further explained that, while working from home, she tripped and fell while trying to kick a toy to her cat. On the reverse side of the claim form B.D., an employing establishment supervisor, indicated that appellant was in telework status and that the incident occurred during scheduled work hours, but controverted the claim, contending that appellant was not in the performance of duty. Appellant stopped work on the date of injury and returned to work with restrictions on June 8, 2020.

In a June 3, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In a statement dated June 8, 2020, appellant indicated that at the time of her injury, she was walking to her home office when she noticed a cat toy in her path. While trying to kick it toward her cat, her right foot skidded on the floor and she fell, landing on her left arm and face. Appellant indicated that she believed she was in the performance of duty at the time of the injury, because she was ordered to work from home until further notice due to the closing of federal buildings due to COVID-19.

In a report dated May 21, 2020, Dr. Russell M. LaFrance, a Board-certified orthopedic surgeon, diagnosed appellant with a left proximal humerus fracture including the greater tuberosity with endosteal scalloping in the humeral head. He noted a history that she fell while kicking a cat toy across her wood floor.

By decision dated July 8, 2020, OWCP denied appellant's claim, finding that she had not established that her injury was sustained in the performance of duty. It found that she was injured while working from home and engaged in an act for personal comfort and convenience. OWCP further noted that the personal comfort doctrine did not apply to employees working at home and that only activities directly related to official duties were covered. It further found that the activity appellant was engaged in at the time of her injury was not directed to the actual performance of the duties of her federal employment. Consequently, OWCP concluded that the requirements had not been met to establish an injury or medical condition as defined by FECA.

On August 6, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In support of her request, she submitted a second statement reiterating that she believed she was in the performance of duty when she was injured, because she was instructed to work from home effective March 23, 2020. Appellant also explained that, due to the sensitive nature of her work materials involving taxpayer information, she utilized a confined space in her home as an office, and when she finishes her coffee in the morning, she takes the cup downstairs to her kitchen so that it does not take up necessary office space. She related that on May 20, 2020 she was returning to her home office from the kitchen and tried to kick a toy to her cat, missed, and went flying onto the ground in front of her stairs.

By decision dated October 1, 2020, OWCP's hearing representative affirmed OWCP's denial of the claim.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”<sup>6</sup> The phrase “sustained while in the performance of duty” has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers’ compensation law of “arising out of and in the course of employment.”<sup>7</sup> The phrase “in the course of employment” is recognized as relating to the work situation, and more particularly, relating to elements of time, place, and circumstance. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be stated to be engaged in the master’s business, at a place where the employee may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto.<sup>8</sup> This alone is insufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury “arising out of the employment” must be shown, and this encompasses not only the work setting, but also a causal concept, the requirement being that the employment caused the injury.<sup>9</sup>

Its procedures provide that ordinarily, the protections of FECA<sup>10</sup> do not extend to the employee’s home, but there is an exception when the injury is sustained while the employee is performing official duties. In situations of this sort, the critical problem is to ascertain whether at the time of injury the employee was in fact doing something for the benefit of the employer.<sup>11</sup>

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<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *See D.L.*, Docket No. 19-0276 (issued April 20, 2020); *M.T.*, Docket No. 17-1695 (issued May 15, 2018); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Charles Crawford*, 40 ECAB 474, 476-77 (1989).

<sup>8</sup> *See M.T., id.*; *Mary Keszler*, 38 ECAB 735, 739 (1987).

<sup>9</sup> *See M.T., id.*; *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

<sup>10</sup> *Supra* note 1.

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(f)(1) (August 1992); *see also M.T.*, Docket No. 16-0927 (issued February 13, 2017); *S.F.*, Docket No. 09-2172 (issued August 23, 2010).

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.<sup>12</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on May 20, 2020, as alleged.

As noted above, for employees performing official duties at home, OWCP has provided that employees must be directly engaged in the performance of their duties to be covered under FECA.<sup>13</sup> Appellant alleged that she was injured when she kicked a toy to her cat. Her actions constitute a deviation from the course of employment. At the time of the slip and fall, appellant was not engaged in an activity essential to her employment or reasonably incidental to the duties that she was hired to perform.<sup>14</sup> The Board thus finds that the injury she sustained did not occur in the performance of her federal employment duties.

For these reasons, the Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on May 20, 2020, as alleged.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an injury, in the performance of duty on May 20, 2020, as alleged.

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<sup>12</sup> See A.S., Docket No. 17-1880 (issued December 12, 2018); T.C., Docket No. 16-1070 (January 24, 2017).

<sup>13</sup> *Supra* note 1

<sup>14</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board